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Of Counsel

H LaDon Baltimore

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**Also licensed in AL

APR 13 2005 11 14 AM
Tennessee Regulatory Authority
Docket RU011
April 13, 2005

Jean Stone, Esq., Hearing Officer
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-5015

Via Hand Delivery

Re: Enforcement of Interconnection Agreement Between BellSouth
Telecommunications, Inc. and NuVox Communications, Inc.; Docket No 04-
00133

Dear Hearing Officer Stone:

Enclosed for filing are the original and 13 copies of a Motion to Reschedule Oral
Argument to May 2, 2005, or to the earliest available date that is acceptable to the Authority and
that allows both parties to be represented by their counsel of choice.

If you have questions, please do not hesitate to contact me

Sincerely,



H. LaDon Baltimore
NuVox Communications, Inc

LDB/dcg
Enclosures
cc: Parties of Record

'05 APR 13 AM 11 14

Enforcement of Interconnection Agreement Between BellSouth Telecommunications, Inc. and NuVox Communications, Inc.

2 TN REGULATORY AUTHORITY
Docket No. 04E-001331

NuVox Communications, Inc. ("NuVox"), by and through its undersigned counsel, respectfully submits this motion to reschedule oral argument to Monday, May 2, 2005, or to the earliest available date that is acceptable to the Authority and that allows both parties to be represented by their counsel of choice.

BellSouth commenced this action by petition filed pursuant to T C A §65-4-117 and Rule 1220-1-1.09 for interpretation of BellSouth's Interconnection Agreement with NuVox. NuVox filed an answer stating that BellSouth's complaint is frivolous and should be dismissed or denied. A status conference was held and various filings made, including briefs and reply briefs. On April 11, 2005, the Hearing Officer issued a Notice of Oral Argument before the panel on Monday, April 18, 2005. Counsel for NuVox still has not received service of the notice and only came to know about it on Tuesday, April 12, 2005.

NuVox files this motion because it, and its regional counsel, have preexisting commitments on Monday April 18, 2005 that cannot be rescheduled. NuVox personnel and Washington, D.C. based counsel, John Heitmann, will be in Montgomery, Alabama for a joint arbitration hearing before the Alabama Public Service Commission that begins at 9.00 AM on Tuesday, April 19, 2005. Accordingly, Mr. Heitmann is scheduled to meet with clients that are parties to that arbitration, including NuVox and fellow Joint Petitioners KMC and Xspedius and all witnesses therefore, for critical hearing preparation in Montgomery on Monday, April 18. Extensive travel arrangements have already been made for counsel and each of the parties'

witnesses (4), including NuVox in-house counsel and witness, Mr. Russell, whose attendance also would be required at oral argument before the TRA. There is no other time available during which Mr. Heitmann and Mr. Russell can convene for preparation for the Alabama hearing with fellow *panel* witnesses from the Joint Petitioners. Therefore, unless the newly scheduled oral argument in Tennessee is continued, NuVox's ability to present its case before the TRA will be compromised and NuVox and its fellow Joint Petitioners' ability to present their case before the Alabama PSC panel will be compromised.

Local counsel for NuVox contacted BellSouth regarding an agreement for continuance as required by Tennessee Regulatory Rule 1220-1-2- 07(1). BellSouth refuses to agree to a continuance, therefore necessitating this motion. Copies of electronic mail correspondence from BellSouth's counsel indicating availability on May 2, 2005 for a Florida Public Service Commission conference that has now been scheduled for May 6, 2005 and a subsequent e-mail indicating an unexplained conflict on May 2, 2005 are attached.¹

NuVox merely requests a continuance to the next Directors' Conference, May 2, 2005, or to the earliest available date that is acceptable to the Authority and that allows both parties to be represented by their counsel of choice. This reasonable request is not a delaying tactic and is necessary as set forth above. BellSouth's interest will not be prejudiced by the continuance to the next Directors' Conference. Whereas NuVox's interests – and those of two CLECs that are not parties to this proceeding, but are parties to a joint arbitration before the Alabama PSC - will be prejudiced if this motion for continuance is not granted.

Tennessee Regulatory Authority Rule 1220-1-2.07(4) states:

- (4) In determining whether to grant such a motion, the Hearing Officer or the Authority may consider the relative convenience of the parties, the

¹ If BellSouth's counsel of choice has a conflicting commitment on May 2, 2005 that cannot be rescheduled, NuVox does not seek to have oral argument scheduled on that day, in spite of BellSouth's conflict. Instead, NuVox respectfully submits that the oral argument should be scheduled on the earliest available date that is acceptable to the Authority and that also can be accommodated by each party's counsel of choice (Mr. Heitmann will be presenting oral argument for NuVox and it is our understanding that Mr. Marcus, from BellSouth's Atlanta headquarters, will be presenting oral argument for BellSouth).

Authority's calendar for hearings and the necessity for the expeditious disposition of the case.

NuVox's motion meets these criteria. NuVox will be greatly harmed if its selected outside counsel who has represented and continues to represent NuVox in each of the state commission cases involving BellSouth's audit requests is unable to attend. Similarly, NuVox will be greatly harmed if its in-house counsel and company representative, Mr. Russell, is unable to attend. BellSouth will not be harmed by a continuance, as there are no damages at issue in this case (the issues are limited to those surrounding whether, how and the extent to which BellSouth has the right to initiate an audit) and the timing of any audit that might come as a result of it would not change in any way what BellSouth could seek with the results of any such audit. At this late date, rescheduling of meetings and travel for NuVox, its fellow Joint Petitioners' witnesses and counsel for the Alabama arbitration hearing simply cannot be done without greatly harming the ability of NuVox, KMC and Xspedius to present their arbitration case before the Alabama PSC panel. The Authority's calendar has a Directors' Conference for May 2, 2005; and there is no emergency in this matter that would require an oral argument in this matter before then.

For the reasons stated herein, NuVox requests that the oral argument scheduled for Monday, April 18, 2005 be rescheduled to Monday, May 2, 2005, or to the earliest available date that is acceptable to the Authority and that allows both parties to be represented by their counsel of choice.

Respectfully submitted,

NuVox Communications, Inc.



John J. Heitmann
Jennifer M. Kashatus
KELLEY DRYE & WARREN LLP
1200 19th Street, NW
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)

H. LaDon Baltimore
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211 Seventh Avenue North
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don.baltimore@farrar-bates.com

jheitmann@kelleydrye.com
jkashatus@kelleydrye.com

overnight delivery, or facsimile transmission to the following.

H. AD Butts

Heitmann, John

From: Marcus, Theodore [theodore.marcus@bellsouth.com]
Sent: Wednesday, April 13, 2005 8:38 AM
To: Heitmann, John
Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com; Edenfield, Kip; Hicks, Guy; Phillips, Joelle; Meza, James; don.baltimore@farrar-bates.com
Subject: RE: TN Oral Argument

John

I think you are out of line at this point, and I am not sure that the Commissioners would disagree with that assessment. Please file your motion. Thank you.

Theodore

-----Original Message-----

From: Heitmann, John [mailto:JHeitmann@KelleyDrye.com]
Sent: Wednesday, April 13, 2005 8:01 AM
To: Marcus, Theodore
Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com; Edenfield, Kip; Hicks, Guy; Phillips, Joelle; Meza, James; don.baltimore@farrar-bates.com
Subject: RE: TN Oral Argument

What is the nature of your conflict on 5/2?

John J. Heitmann

Kelley Drye & Warren LLP
 1200 19th Street, N.W., Suite 500
 Washington, D.C. 20036
 Office (202) 955-9888
 Fax (202) 955-9792
 Mobile (703) 887-9920
 jheitmann@kelleydrye.com

-----Original Message-----

From: Marcus, Theodore [mailto:theodore.marcus@bellsouth.com]
Sent: Wednesday, April 13, 2005 7:55 AM
To: Heitmann, John
Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com; Edenfield, Kip; Hicks, Guy; Phillips, Joelle; Meza, James; don.baltimore@farrar-bates.com
Subject: RE: TN Oral Argument

I am available for a short conference call with the FPSC to go over issues the week of May 2nd. I am unavailable for a merits hearing at the TRA on May 2nd itself. I'm not sure what point you would be making by attaching the email, but you are welcome to do so if that is your client's desire. The document is not privileged, from BST's perspective.

Thank you

-----Original Message-----

From: Heitmann, John [mailto:JHeitmann@KelleyDrye.com]

4/13/2005

Sent: Wednesday, April 13, 2005 7:43 AM

To: Marcus, Theodore

Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com; Edenfield, Kip; Hicks, Guy ; Phillips, Joelle; Meza, James; don.baltimore@farrar-bates.com

Subject: RE: TN Oral Argument

Theodore,

You indicated to the FPSC that you were available the week of May 2 Is that no longer the case? Our draft motion has that e-mail attached to it at the moment

John

John J. Heitmann

Kelley Drye & Warren LLP

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Washington, D.C. 20036

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Fax (202) 955-9792

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jheitmann@kelleydrye.com

-----Original Message-----

From: Marcus, Theodore [mailto:theodore.marcus@bellsouth.com]

Sent: Wednesday, April 13, 2005 7:15 AM

To: Heitmann, John

Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com; Edenfield, Kip; Hicks, Guy ; Phillips, Joelle; Meza, James

Subject: RE: TN Oral Argument

John

My phone number is (404) 335-0722 I appreciate the time constraints that you have described Indeed, I've had to make quick adjustments to my schedule in light of the recent scheduling of oral argument Unfortunately, I'm not in a position to accede to your request for two reasons (1) I have commitments May 2nd, and 9th, frankly, and (2) movement beyond those times is very much against my client's interests

I noticed -- and this is intended to be a helpful comment -- that the NC TRO motion hearing was covered efficiently by local counsel, with Mr Russell present at the table Perhaps that experience may cause your team to reconsider the necessity of unilaterally having to seek to move the hearing Just a thought

For the future (and I recognize that the TRA's timing may have caught us both by surprise), let me say that I am not against counsel working together to make scheduling adjustments out of courtesy Unfortunately, I am not in a position to do that this time

Theodore

Senior Regulatory Counsel

BellSouth Telecommunications, Inc

675 West Peachtree Street, N E.

43rd Floor

Atlanta, GA 30375

(404) 335-0722

theodore.marcus@bellsouth.com

-----Original Message-----

From: Heitmann, John [mailto:JHeitmann@KelleyDrye.com]

Sent: Tuesday, April 12, 2005 7:02 PM

To: Marcus, Theodore

Cc: Kashatus, Jennifer M.; don.baltimore@farrar-bates.com

Subject: TN Oral Argument

Theodore,

Much to my surprise, I don't seem to have your number. I called Kipp earlier today seeking reconsideration on BellSouth HQ decision to decline my request for continuance in TN to May 2. I understand from a voice mail left by Kipp that it is your call. The reason for my request is that I have a conflict. I have hearing starting 9am Tuesday in Montgomery with Jim Meza and I will be in Montgomery for witness prep on Monday afternoon. The travel schedules and calendars of a half-dozen people are already set. I have a motion ready to file, but I am hoping that you will reconsider and extend the professional courtesy that opposing counsel typically extend each other in these types of situations. If you can advise me when you arrive at work tomorrow, it would be most appreciated.

Thank you

John

John J. Heitmann

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4/13/2005

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Heitmann, John

From: Marcus, Theodore [theodore.marcus@bellsouth.com]
Sent: Thursday, April 07, 2005 10:43 AM
To: Jeremy Susac, Vicki Gordon Kaufman
Cc: JON MOYLE, JR., Kashatus, Jennifer M., Edenfield, Kip, Heitmann, John, Jason Rojas
Subject: RE: Issue Identification in Docket No. 040028 and 040527

Thank you, Jeremy

April 20th is not a good date for me either, nor is April 29th (I will be in DC at both times, including a status hearing on the 28th at the FCC that Kip and I will both be attending -- it should only last a day, but I cannot swear to that). The first week of May works for me, as does the third week.

Also, please be advised that BellSouth opposes NuVox's effort to depose Jerry Hendrix in this matter on the 18th, and will be filing a motion for protective order in that regard by COB today. NuVox's deposition notice is premature, as it pre-supposes that there are factual issues regarding which discovery is appropriate, yet the FPSC is currently considering that very question.

Thank you

Theodore

Senior Regulatory Counsel
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
43rd Floor
Atlanta, GA 30375
(404) 335-0722
theodore.marcus@bellsouth.com

-----Original Message-----

From: Jeremy Susac [mailto:JSusac@PSC.STATE.FL.US]
Sent: Thursday, April 07, 2005 9:53 AM
To: Marcus, Theodore; Vicki Gordon Kaufman
Cc: JON MOYLE, JR.; jkashatus@kelleydrye.com; Edenfield, Kip; JHeitmann@KelleyDrye.com; Jason Rojas
Subject: FW: Issue Identification in Docket No. 040028 and 040527

Theodore

This is the original e-mail that started the present discussion. I also put in a call to Kip and counsel for NewSouth and NuVox. I left a message with Kip, and decided to follow-up with an e-mail this morning. Counsel for NewSouth/NuVox indicated that the afternoon of the 20th does not work and would prefer April 29th. Does April 29th work? If not, please provide some dates or I'll wait to hear back from Kip.

FYI: I have a meeting with the Prehearing Officer's aide this morning to discuss the motion to compel in Docket No. 040028. The Prehearing Officer will return from service hearings next week, and will render a decision thereafter.

Thanks in advance for your time and effort in this matter.

Hope all is well,

4/13/2005

Jeremy
850-413-6236

From: Jeremy Susac
Sent: Wednesday, April 06, 2005 1:46 PM
To: 'Edenfield, Kip'; Heitmann, John; JON MOYLE, JR.; Vicki Gordon Kaufman
Cc: Nancy Sims
Subject: Issue Identification in Docket No. 040028 and 040527

Does the afternoon of April 20th work for everyone? If not, please send some dates that do work

Thanks,

JLS
85-413-6236

From: Jackie Schindler
Sent: Tuesday, April 05, 2005 4:44 PM
To: Jeremy Susac; Cheryl Bulecza-Banks
Subject: FW: Meet me request

From: VConf [mailto:vconf@myflorida.com]
Sent: Tuesday, April 05, 2005 4:41 PM
To: Jackie Schindler
Subject: RE: Meet me request

YOUR MMCC FOR 4/20
20 LINES
1:30-10 PM
PHONE 850/488-5778
SC 278-5778
CONF# 20H0405

THANKS,
JANE GREGORY
VOICE CONFERENCE SERVICES
TALLAHASSEE, FLORIDA
850/922-9912
SC 292-9912

-----Original Message-----

From: Jackie Schindler [mailto:JSchindl@PSC.STATE.FL.US]
Sent: Tuesday, April 05, 2005 4:12 PM
To: vconf@myflorida.com
Subject: Meet me request

Please assign a meet me number for the following meeting:

Wednesday, April 20, 2005

1:30 pm - until...

at least 15 lines

Thanks!

Jackie Schindler

413-6754

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